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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SIX

THOMAS SABY et al.,  
  
Plaintiffs and Respondents,  
  
v.  
  
DEBRA A. LOUKS,  
  
Defendant and Appellant.

2d Civil No. B209906  
(Super. Ct. No. SC045330)  
(Ventura County)

Debra A. Louks, in propria persona, appeals a judgment awarding damages to Thomas and Marianne Saby. We modify and reduce the judgment to reflect a \$17,500 good faith settlement by a codefendant, but otherwise affirm.

*FACTS AND PROCEDURAL HISTORY*

Debra and David Louks and Thomas and Marianne Saby were longtime neighbors in Newbury Park. In 2001, the Sabys complained to a local animal control agency regarding incessant barking by the Loukses' four dogs. On October 24, 2001, an agency employee ordered the Loukses to reduce the number of dogs they owned.

At the time, Blue Cross of California ("Blue Cross") employed Debra Louks as an underwriter. When Louks learned of the animal control directive, she accessed the confidential health insurance application and medical claims of the Sabys, who were Blue Cross subscribers. Louks then telephoned Marianne Saby and threatened to prompt cancellation of her health insurance. Louks's actions were outside the scope of

her employment duties with Blue Cross and were a violation of company policies regarding subscriber confidentiality.

Marianne Saby immediately contacted Blue Cross and reported the breach of confidentiality. Blue Cross responded with an investigation, including a search history of Louks's workplace computer. On November 7, 2001, it dismissed Louks from employment. Blue Cross did not inform the Sabys of the dismissal, however, and they continued to worry about their privacy.

On November 6, 2002, Louks filed an action against Blue Cross and the Sabys. Louks alleged that Blue Cross wrongfully dismissed her from employment because she suffered from cancer. She alleged that the Sabys wrongfully interfered with her employment relationship, and that they intentionally caused her emotional distress by making false complaints to Blue Cross. In turn, the Sabys cross-complained against Louks and her husband, alleging causes of action for invasion of privacy, intentional infliction of emotional distress, and nuisance. The Sabys also cross-complained against Blue Cross, alleging causes of action for indemnity, contribution, and declaratory relief.

During discovery, Louks admitted in her deposition that she accessed the Sabys' health insurance application and claims. On September 24, 2004, she settled her lawsuit against Blue Cross in exchange for a waiver of costs. On January 27, 2004, shortly before trial, Louks dismissed her action against the Sabys without prejudice.

The Sabys' cross-complaint against Blue Cross and the Loukses then proceeded to arbitration. On May 2, 2005, the arbitrator issued an award against the Loukses. The arbitrator found that Debra Louks accessed the Sabys' medical claims in violation of the rules of her employment and that she threatened to inform Blue Cross that the Sabys were untruthful in their insurance application. He also found that the Loukses created a neighborhood nuisance with barking dogs, noise, and disposal of dog waste, among other things. The arbitrator awarded the Sabys \$97,474 damages for invasion of privacy, nuisance, infliction of emotional distress, and litigation costs. For reasons not relevant here, the arbitrator found that Blue Cross was not liable to the Sabys for indemnity or contribution.

The trial court confirmed the arbitration award and entered judgment accordingly on June 22, 2005. Several weeks later, the Loukses filed a petition for bankruptcy protection. On October 7, 2005, the trial court, on its own motion, dismissed Louks's action against the Sabys with prejudice.

Following dismissal of Louks's lawsuit by the trial court, the Sabys brought an action against her and her attorney, Steven K. Perrin, for malicious prosecution and abuse of process. Prior to trial, Perrin entered into and the trial court approved a \$17,500 good faith settlement pursuant to Code of Civil Procedure section 877.6, subdivision (a)(2),<sup>1</sup> and *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499. Subsequently, the Sabys dismissed their lawsuit with prejudice as to Perrin.

Following a court trial in the malicious prosecution and abuse of process action, the trial judge decided that "Louks stepped over the line when she threatened to [a]ffect Mr. and Mrs. Sabys' health insurance coverage by using her position in Blue Cross." The court awarded the Sabys \$305,106.04 economic damages and \$25,000 damages for emotional distress. The economic damages consist of attorney fees paid to arbitration counsel and trial counsel, Jeffrey Lieber and Constance Zarkowski.

Louks appeals and contends that the trial court erred by: 1) finding proof of the element of favorable termination; 2) finding proof of the elements of abuse of process; 3) awarding attorney fees to the Sabys; and 4) not offsetting the award by the \$17,500 good faith settlement by attorney Perrin.

## *DISCUSSION*

### *I.*

Louks argues that the trial court erred by finding that the Sabys obtained a favorable termination in the previous lawsuit. She correctly points out that it is an essential element of the tort of malicious prosecution. (*Staffpro, Inc. v. Elite Show Services, Inc.* (2006) 136 Cal.App.4th 1392, 1400 & fn. 6.) Louks adds that a voluntary dismissal of an action for economic reasons is not necessarily a favorable termination for

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<sup>1</sup> All further statutory references are to the Code of Civil Procedure.

purposes of a malicious prosecution action. (*Contemporary Services Corp. v. Staff Pro, Inc.* (2007) 152 Cal.App.4th 1043, 1057.)

The elements of a cause of action for malicious prosecution are: 1) a favorable determination upon the merits in the underlying action; 2) which was brought without probable cause; and 3) which was initiated with malice. (*Contemporary Services Corp. v. Staff Pro, Inc., supra*, 152 Cal.App.4th 1043, 1056.) The termination must reflect upon the merits of the action and the plaintiff's innocence of the alleged misconduct. (*Ibid.*) The test is whether the termination tends to indicate the plaintiff's innocence or simply involves technical or procedural reasons that are not inconsistent with his or her guilt. (*Id.* at pp. 1056-1057.)

Here the trial court properly found, with sufficient support in the evidence, that the Sabys received a favorable determination upon the merits in the underlying action. Louks dismissed the lawsuit with prejudice with respect to Blue Cross following her deposition admissions that she accessed the Sabys' confidential Blue Cross files. The day following her dismissal without prejudice against the Sabys, the statute of limitations precluded further action by her against them. (§ 335.1 [two-year limitations period].) Later, the trial court on its own motion dismissed the action against the Sabys with prejudice. Louks stated at trial that "the reason why I included [the Sabys] in the action, is the constant threat of them going to sue me and calling me a criminal and I should be in jail." Thus the record reflects that Louks did not have faith in the merit of her claims against the Sabys and that her dismissal without prejudice was not for a technical, economic, or procedural reason.

## II.

Louks contends that the trial court erred by deciding that the Sabys established their cause of action for abuse of process. She points out that merely initiating or continuing to prosecute a meritless claim for an improper purpose does not establish an abuse of process. (*Ramona United School Dist. v. Tsiknas* (2005) 135 Cal.App.4th 510, 520.)

Here the trial court rendered a general decision for the two causes of action, malicious prosecution and abuse of process, and awarded damages therefor. Where the parties proceed to trial on several counts or causes of action, a general verdict will stand if the evidence supports it on any one sufficient count or cause of action. (*Watson v. Department of Rehabilitation* (1989) 212 Cal.App.3d 1271, 1291; 7 Witkin, Cal. Procedure (5th ed. 2008) Trial, § 354, pp. 413-414.) In view of our discussion, *ante*, concerning malicious prosecution, we need not discuss Louks's arguments regarding abuse of process.

### III.

Louks asserts that the trial court erred by awarding economic damages consisting of attorney fees in prosecuting the malicious prosecution action and attorney fees incurred in defending the previous action. She points out that the Sabys' attorney stated that they incurred only \$14,696 in attorney fees up until the time of the voluntary dismissal without prejudice. Louks adds that the Sabys incurred fees in prosecuting the cross-complaint against Blue Cross for which she should not be responsible.

The trial court did not err in awarding the Sabys their legal fees incurred in the underlying lawsuit and in prosecuting the malicious prosecution action as economic damages. (*Java Oil Ltd. v. Sullivan* (2008) 168 Cal.App.4th 1178, 1190-1191 [in malicious prosecution action, attorney fees are recoverable as damages].) The court did not award attorney fees as an item of costs or as recovery pursuant to a contract; the attorney fee award rests upon the economic losses suffered by the Sabys. "In cases of [malicious prosecution], there is no settled rule as to the amount to be recovered." (*Weaver v. Page* (1856) 6 Cal. 681, 685.) The trial court may consider the losses sustained by the plaintiff and the circumstances attending the litigation. (*Ibid.*) A reviewing court must uphold an award of damages whenever possible. (*Bertero v. National General Corp.* (1974) 13 Cal.3d 43, 61.)

### IV.

Louks argues that the trial court erred by not offsetting the \$17,500 good faith settlement by her former attorney against the Sabys' award. (§ 877, subd. (a).) The

Sabys concede there is substantive merit to Louks's claim of offset, but argue that she did not directly request offset in the trial court with citation to authority.

We agree that Louks is entitled to the \$17,500 offset. (§ 877, subd. (a).) In the interests of justice, we so modify and reduce the judgment to reflect the offset.

We modify and reduce the judgment by the \$17,500 good faith settlement, but otherwise affirm. Each party is to bear his or her own costs.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

COFFEE, J.

Kenneth W. Riley, Judge  
Superior Court County of Ventura

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Debra A. Louks, in pro. per., for Defendant and Appellant.

Constance N. Zarkowski for Plaintiffs and Respondents.